

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HOUSE BILL 2145

AN ACT

AMENDING SECTIONS 38-797.07, 38-797.08 AND 38-797.11, ARIZONA REVISED
STATUTES; RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-797.07, Arizona Revised Statutes, is amended to
3 read:

4 38-797.07. LTD program benefits; limitations; definitions

5 A. The LTD program is subject to the following limitations:

6 1. Except as provided in paragraph 7 of this subsection, monthly
7 benefits shall not exceed two-thirds of a member's monthly compensation at
8 the time disability commences, reduced by:

9 (a) FOR A MEMBER WHOSE DISABILITY COMMENCES BEFORE JULY 1, 2008,
10 sixty-four per cent of social security disability benefits that the member or
11 the member's dependents are eligible to receive.

12 (b) FOR A MEMBER WHOSE DISABILITY COMMENCES ON OR AFTER JULY 1, 2008,
13 EIGHTY-FIVE PER CENT OF SOCIAL SECURITY DISABILITY BENEFITS THAT THE MEMBER
14 OR THE MEMBER'S DEPENDENTS ARE ELIGIBLE TO RECEIVE, BUT NOT INCLUDING:

15 (i) THE AMOUNT OF ATTORNEY FEES APPROVED PURSUANT TO SOCIAL SECURITY
16 ADMINISTRATION RULES AND REASONABLE DOCUMENTED COSTS PAID TO AN ATTORNEY TO
17 SECURE THAT DISABILITY BENEFIT.

18 (ii) ANY COST OF LIVING ADJUSTMENTS THAT ARE GRANTED AFTER THE MEMBER
19 COMMENCES BENEFITS UNDER THIS SECTION.

20 (c) FOR A MEMBER WHOSE DISABILITY COMMENCES BEFORE JULY 1, 2008,
21 eighty-three per cent of social security retirement benefits that the member
22 is eligible to receive.

23 (d) FOR A MEMBER WHOSE DISABILITY COMMENCES ON OR AFTER JULY 1, 2008,
24 EIGHTY-FIVE PER CENT OF SOCIAL SECURITY RETIREMENT BENEFITS THAT THE MEMBER
25 IS ELIGIBLE TO RECEIVE, BUT NOT INCLUDING ANY COST OF LIVING ADJUSTMENTS THAT
26 ARE GRANTED AFTER THE MEMBER COMMENCES BENEFITS UNDER THIS SECTION.

27 ~~(e)~~ (e) All of any workers' compensation benefits.

28 ~~(d)~~ (f) All of any payments for a veteran's disability if both of the
29 following apply:

30 (i) The veteran's disability payment is for the same condition or a
31 condition related to the condition currently causing the member's total
32 disability.

33 (ii) The veteran's disability is due to, or a result of, service in
34 the armed forces of the United States.

35 ~~(e)~~ (g) All of any other benefits by reason of employment that are
36 financed partly or wholly by an employer, including payments for sick leave.
37 This subdivision does not include any retirement benefit that is received by
38 the member pursuant to a state retirement system or plan other than ASRS.

39 ~~(f)~~ (h) Fifty per cent of any salary, wages, commissions or other
40 employment related pay that the member receives or is entitled to receive
41 from any gainful employment in which the member actually engages.

42 2. Monthly benefits are not payable until a member has been totally
43 disabled for a period of six consecutive months.

44 3. Monthly benefits are not payable to a member who is receiving
45 retirement benefits from ASRS.

1 4. Monthly benefits are not payable to a member whose disability is
2 due to, or a result of, any of the following:

3 (a) An intentionally self-inflicted injury.

4 (b) War, whether declared or not.

5 (c) An injury incurred while engaged in a felonious criminal act or
6 enterprise.

7 (d) ~~FOR A MEMBER WHOSE MOST RECENT MEMBERSHIP IN THE LTD PROGRAM~~
8 ~~COMMENCES BEFORE JULY 1, 2008~~, an injury or sickness for which the member
9 received medical treatment within three months before the date of the
10 member's coverage under the LTD program. This subdivision does not apply to
11 a member who either:

12 (i) Has been an active member of an employer for twelve continuous
13 months.

14 (ii) Is employed by an employer ~~as of June 30~~ BEFORE JULY 1, 1988.

15 (e) ~~FOR A MEMBER WHOSE MOST RECENT MEMBERSHIP IN THE LTD PROGRAM~~
16 ~~COMMENCES ON OR AFTER JULY 1, 2008, AN INJURY OR SICKNESS FOR WHICH THE~~
17 ~~MEMBER RECEIVED MEDICAL TREATMENT WITHIN SIX MONTHS BEFORE THE DATE OF THE~~
18 ~~MEMBER'S COVERAGE UNDER THE LTD PROGRAM. THIS SUBDIVISION DOES NOT APPLY TO~~
19 ~~A MEMBER WHO HAS BEEN AN ACTIVE MEMBER OF AN EMPLOYER FOR TWELVE CONTINUOUS~~
20 ~~MONTHS.~~

21 5. Monthly benefits cease to be payable to a member at the earliest of
22 the following:

23 (a) The date the member ceases to be totally disabled.

24 (b) The date the member:

25 (i) Ceases to be under the direct care of a doctor.

26 (ii) Refuses to undergo any medical examination or refuses to
27 participate in any work rehabilitation program for which the member is
28 reasonably qualified by education, training or experience and that is
29 requested by the insurance company or claims administrator that is selected
30 by the board to administer the LTD program.

31 (c) The date the member withdraws employee contributions with interest
32 and ceases to be a member.

33 (d) The later of the following:

34 (i) The member's normal retirement date.

35 (ii) The month following sixty months of payments if disability occurs
36 before sixty-five years of age.

37 (iii) The month following attainment of seventy years of age if
38 disability occurs at sixty-five years of age or after but before sixty-nine
39 years of age.

40 (iv) The month following twelve months of payments if disability
41 occurs at or after sixty-nine years of age.

42 (e) If the member is convicted of a criminal offense and sentenced to
43 more than six months in a jail, prison or other penal institution, the first
44 day of the month following the first thirty continuous days of the member's
45 confinement for the remainder of the confinement.

1 6. Monthly benefits are payable under the LTD program only for
2 disabilities that commence on or after July 1, 1988.

3 7. The minimum benefit for a member who is entitled to receive
4 benefits under the LTD program is fifty dollars per month.

5 8. Members are eligible to receive the benefits and payments described
6 in paragraph 1 of this subsection, and the reductions provided by paragraph 1
7 of this subsection apply even though the benefits are not actually paid as
8 follows:

9 (a) For primary and dependent social security benefits, the members
10 are eligible for the benefits until the benefits are actually awarded, or if
11 the benefits are denied, until the member pursues the social security appeal
12 process through a hearing before a social security administrative law judge
13 or until the insurance company or claims administrator determines that the
14 member is not eligible for social security disability benefits.

15 (b) For benefits and payments from any other source provided in
16 paragraph 1 of this subsection, the members are eligible for the benefits if
17 it is reasonable to believe that the benefits will be paid on proper
18 completion of the claim or would have been paid except for the failure of the
19 member to pursue the claim in time.

20 9. A member shall be considered totally disabled if:

21 (a) During the first thirty months of a period of disability, the
22 member is unable to perform all duties of the position held by the member
23 when the member became totally disabled.

24 (b) For a member who has received monthly benefits for twenty-four
25 months within a five-year period, the member is unable to perform any work
26 for compensation or gain for which the member is reasonably qualified by
27 education, training or experience in an amount at least equal to the
28 scheduled benefits prescribed in paragraph 1 of this subsection.

29 B. A member who receives monthly benefits from the LTD program is
30 entitled to receive service credit pursuant to article 2 of this chapter from
31 the time disability commences until benefits cease to be payable, except that
32 for a member who receives monthly benefits from the LTD program on or after
33 June 30, 1999 the number of years of service credited to the member's
34 retirement account during the period the member receives LTD benefit payments
35 shall not cause the member's total credited service for retirement benefits
36 to exceed the greater of thirty years or the total years of service credited
37 to the member's retirement account on the commencement of disability.

38 C. This section does not prohibit a member whose disability has been
39 established to the satisfaction of the board from relying on treatment by
40 prayer through spiritual means in accordance with the tenets and practice of
41 a recognized church, religious denomination or Native American traditional
42 medicine by a duly accredited practitioner of the church, denomination or
43 Native American traditional medicine without suffering reduction or
44 suspension of the member's monthly benefits.

1 D. For the purposes of this section:

2 1. "Received medical treatment" means that the member consulted with
3 or received the advice of a licensed medical or dental practitioner,
4 including advice given during a routine examination, and it includes
5 situations in which the member received medical or dental care, treatment or
6 services, including the taking of drugs, medication, insulin or similar
7 substances.

8 2. "Social security" and "social security disability" includes the
9 railroad retirement act of 1974 (P.L. 93-445; 88 Stat. 1305; 45 United States
10 Code sections 231 through 231u).

11 Sec. 2. Section 38-797.08, Arizona Revised Statutes, is amended to
12 read:

13 38-797.08. Errors; benefit recomputation

14 If any change or error in the records results in any member receiving
15 from the LTD program more or less than the member would have been entitled to
16 receive if the records had been correct, the board shall correct the error
17 and shall adjust the payments in a manner so that the equivalent of the
18 benefit to which the member was correctly entitled is paid. The board shall
19 correct any change or error and shall pay the appropriate monies to a member
20 or shall recover monies from the member if the member is overpaid. **THE BOARD
21 SHALL RECOVER MONIES BY REDUCING ANY BENEFIT THAT IS OTHERWISE PAYABLE BY
22 ASRS OR THE LTD PROGRAM TO AN ACTIVE, INACTIVE, DISABLED OR RETIRED MEMBER,
23 SURVIVOR, CONTINGENT ANNUITANT, BENEFICIARY OR ALTERNATE PAYEE.**

24 Sec. 3. Section 38-797.11, Arizona Revised Statutes, is amended to
25 read:

26 38-797.11. Exemptions from execution, attachment and taxation;
27 exception

28 A. The benefits, the employer and member contributions and the
29 securities in the LTD trust fund established by section 38-797.02 are not
30 subject to execution or attachment and are nonassignable except as
31 specifically provided in this article **OR ARTICLE 2 OF THIS CHAPTER**. The
32 employer and member contributions and the securities in the LTD trust fund
33 established by section 38-797.02 are exempt from state, county and municipal
34 income taxes. Benefits received by a member from the LTD program are subject
35 to tax pursuant to title 43.

36 B. Interest, earnings and all other credits pertaining to benefits are
37 not subject to execution or attachment and are nonassignable.